

EXHIBIT 24

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF TENNESSEE

3 ULTIMA SERVICES CORPORATION,

4 Plaintiff,

5 v.

6 Case No.

7 U.S. DEPARTMENT OF AGRICULTURE,

2:20-cv-00041-

8 U.S. SMALL BUSINESS

DCLC-CRW

9 ADMINISTRATION, SECRETARY OF

10 AGRICULTURE, AND ADMINISTRATOR

11 OF THE SMALL BUSINESS

12 ADMINISTRATION,

13 Defendants.

14 VIDEOCONFERENCE DEPOSITION OF

15 HEIDI ATKINSON

16 DATE: Wednesday, April 20, 2022

17 TIME: 9:44 a.m.

18 LOCATION: Remote Proceeding

19 Front Royal, Virginia

20 REPORTED BY: Timothy Guevara, Notary Public

21 JOB NO.: 5192132

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A P P E A R A N C E S (Cont'd)

ON BEHALF OF DEFENDANTS U.S. DEPARTMENT OF
AGRICULTURE, U.S. SMALL BUSINESS ADMINISTRATION,
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1 A I don't have that information in front of
2 me. I believe that would have been provided via the
3 attorneys.

4 Q Okay. How many of the contracts that arose
5 after splitting up the IDIQs were awarded to
6 women-owned small business?

7 A Again, I don't have that information in
8 front of me. It would be in the records provided.

9 Q Now we're going to move on to topic five
10 under 30(b) (6) matters, and it's, "Decisions to
11 utilize the 8(a) Business Development program for
12 providing administrative and technical services to
13 NRCS offices." Just to begin, who decides to utilize
14 the 8(a) program for a particular contract?

15 A Just a moment. Should I be moving from this
16 screen back to video? Are we done with --

17 Q Oh, yes. You -- we're done with that
18 document for now, yes.

19 A So could you please repeat the question?

20 Q No problem. Who decides to utilize the 8(a)
21 program for any particular contract with NRCS?

22 A The contracting officer makes the award

1 decision for all contracts.

2 Q Okay. What are the criteria to put a
3 particular contract into the 8(a) program?

4 A The Small Business Administration sets that
5 as far as placing it into the program.

6 Q So are there any criteria relating to the
7 subject matter of the contract, the type of work
8 that's being done, geographical area?

9 MS. SMITH: Objection. Compound
10 question and ambiguous, but you can answer it.

11 THE WITNESS: I was thinking the same
12 thing. I wasn't sure what -- what the question really
13 meant --

14 BY MS. SCOTT:

15 Q Okay. Let me go back.

16 A The Small Business Administration lists the
17 criteria, and you would be able to reference that in
18 the Small Business Administration handbook. I -- I
19 don't have that off the top of my head.

20 Q Okay. Who decided to utilize the 8(a)
21 program to provide administrative and technical
22 services to NRCS after the IDIQs were broken up?

1 A Any contracting officer that rewarded to an
2 8(a). There were multiple contracting officers, so
3 multiple contracting officers would have made the
4 decision. Not all contracts went to 8(a). So the
5 ones that did would have been made by the contracting
6 officer that awarded the contract.

7 Q Okay. So are there limits as to how many
8 contracts a particular contracting officer can make
9 under the 8(a) program?

10 A No.

11 Q Has the 8(a) program been used to provide
12 other types of services to NRCS other than
13 administrative and technical services?

14 A Yes.

15 Q Can you tell me some of those types?

16 A It falls under -- NRCS awards contracts for
17 an incredible variety of things. So just off the top
18 of my head, a few of them would be boundary surveys,
19 title searches, wetlands dredging, and those are only
20 examples. If you -- if you need exact, you would need
21 to ask those contract records.

22 Q Okay. Before assigning a particular NRCS

1 Q Okay. But I'm asking who sets the criteria
2 for which contracts can go into the 8(a) program?

3 A The contracting officer determines if the
4 contract is eligible to go into the 8(a) program.

5 Q Okay. And how does the contracting officer
6 make that determination?

7 A I think we're going in circles with this
8 question. So by using the criteria that the Small
9 Business Administration sets and that -- that would be
10 on their criteria and I don't have that in front of
11 me.

12 Q Okay. So is it your testimony that there
13 are -- the Small Business Administration has criteria
14 for which contracts can go into the 8(a) program;
15 correct?

16 A No, they do not pre-state that these
17 contracts are eligible for the 8(a) program. They do
18 not state that. The contract has to be evaluated
19 first by the contracting officer.

20 Q And what is the contracting officer
21 evaluating?

22 A Whether or not the contract is eligible for

1 business decisions that were behind that.

2 Q Did you ask her about the business decisions
3 to award those contracts in the 8(a) program?

4 A There -- the decision was not made to award
5 contracts to the 8(a). The -- that -- that was not a
6 centralized decision. There were multiple
7 contractors -- not contractors, contracting officers.
8 There were multiple contracting officers making the
9 awards. Each contracting officer made the award based
10 upon their own decision models. Not all contracts
11 awarded were 8(a) and so she was not a part of that
12 decision-making nor was any other leader. It was made
13 by the individual contracting officer making the award
14 and as I stated, there were multiples of those.

15 Q And how many were not 8(a)? How -- let me
16 go back. I want to clarify this for you. Out of the
17 regional -- the state and local contracts that came
18 about when the IDIQ regional contracts were broken up,
19 out of those contracts, how many were not 8(a)?

20 MS. SMITH: Objection. You can answer.

21 THE WITNESS: I don't know that
22 number -- I don't know that number off the top of my

1 A Yes, that is correct and those vary from
2 state to state. So for example, in Utah, you might
3 have the snow surveys that are done, which would be
4 very different than, for example, the example I
5 already listed in Louisiana where they do dredging of
6 the bayous and that would be different than the rehab
7 of the Chesapeake Bay in Virginia.

8 And so the type of work that is done by the
9 program offices in the states vary drastically from
10 state to state for the conservation type programs they
11 run and so therefore the type of specialized skill
12 they need, while it fits under an umbrella category,
13 will be very different also from state to state.

14 Q Moving to the second bullet on this page.
15 You could read this to yourself. It's kind of wordy.

16 A Okay.

17 Q Do you see any reference to the 8(a)
18 Business Development program in that paragraph?

19 A I do not.

20 Q And to clarify does NRCS or USDA have a goal
21 specifically for the 8(a) program?

22 A They do not.

1 to utilize the 8(a) BD program for providing
2 administrative and technical services to NRCS
3 offices." You previously testified that criteria in
4 the FAR -- sorry. Sorry. Okay. Strike that. You
5 previously mentioned criteria in the FAR regarding use
6 of the 8(a) BD program; is that correct?

7 A I'm not understanding that last word. Are
8 you saying B as in boy, D as in dog?

9 Q Yes. Business Development program.

10 A There you go. Okay. Thank you. I wasn't
11 sure what we were talking about. Okay. So repeat the
12 question, please.

13 Q Yes. You previously mentioned that there's
14 criteria in the FAR regarding use of the 8(a) program;
15 is that correct?

16 A That would be correct.

17 Q Are there -- are the factors that
18 contracting officers consider when awarding contracts
19 through the 8(a) program contained in the FAR?

20 A Yes, that would be in the simplified award
21 acquisition section of the FAR.

22 Q Are there any other factors that contracting

1 officers consider?

2 A Yes. They consider the best needs of the
3 government as -- and that -- again, as I testified
4 earlier, that covers a big scope of -- of things and
5 are unique to each contract.

6 Q Did NRCS award contracts for administrative
7 and technical services through the 8(a) program before
8 the 2017 IDIQs that Ultima was awarded?

9 A Yes, they did.

10 Q Was Ultima awarded any administrative and
11 technical services contracts before receiving the 2017
12 IDIQs?

13 A Yes.

14 Q Okay. Now, you were shown several sole
15 source 8(a) offering letters from NRCS by plaintiff's
16 counsel; is that correct?

17 A That is correct.

18 Q Some of those letters stated that the offer
19 was for a new requirement; is that correct?

20 A That is correct.

21 Q Can you explain why those contracts were
22 considered new requirements?

1 CERTIFICATE OF TRANSCRIBER

2 I, KEARA CONTARTESI, do hereby certify that
3 this transcript was prepared from the digital audio
4 recording of the foregoing proceeding, that said
5 transcript is a true and accurate record of the
6 proceedings to the best of my knowledge, skills, and
7 ability; that I am neither counsel for, related to,
8 nor employed by any of the parties to the action in
9 which this was taken; and, further, that I am not a
10 relative or employee of any counsel or attorney
11 employed by the parties hereto, nor financially or
12 otherwise interested in the outcome of this action.

13 
14

15 KEARA CONTARTESI
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22

1 Ultima Services Corporation v. US Department Of Agriculture
 2 Heidi Atkinson

3 E R R A T A

4 - - - - -

5 PAGE LINE CHANGE

6 15 11 11/2015 - - - - -7 Reason: I recalled wrong date8 15 13 11/2015 - - - - -9 Reason: I recalled wrong date10 17 10 Stone Change "Smith" to "Stonebraker"11 Reason: I used wrong name12 17 12 Change "Gaymullen Brown" to Gay Mullen-Brown13 Reason: Corrected spelling14 19 11+12 Change to Contractor Performance Assessment Reporting System15 Reason: Correct name of the system16 57 20,21+22 The size standard would be considered17 Reason: I did not understand the question when asked18 58 7 Change "No" to "yes"19 Reason: I did not understand the question when asked20 61 14 Change "No" to "yes"21 Reason: I understood that she was asking about the vendor being awarded a contract, not the assignment of NAFSC codes by the Contractor to the contract in IAS

22 5192132

23 100 8+9 Correct to "Contractor Performance Assessment Reporting system" Reason: Change to correct name of the system,24 104 82 Change "Intergovernmental" to "internal" governmentalReason: Correct pronunciation